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Corruption and Anti-corruption Actions in Healthcare

Abstract: Bribery is a common phenomenon. It has various social, moral, economic and political implications, it challenges good management, hinders development and disrupts competition. It violates justice, challenges human rights and impedes the fight against poverty. It also increases the cost of running business, introduces uncertainty in commercial transactions, increases the cost of goods and services as well as deteriorates their quality, which may lead to the loss of life and property, the loss of trust in institutions, and a disruption of honesty and effective functioning of the markets [ISO 37001].

The objective of the article is to present various kinds of corruption that occur in the healthcare sector as well as different anti-corruption actions taken by the entities. The article is based on current subject literature, an analysis of legal acts and various reports publi-

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shed by institutions fighting against corruption in the healthcare. The article is a desk research analysis.

Key words: bribery, kinds of corruption, healthcare, anti-corruption actions

Introduction

Corruption is a common phenomenon and occurs, to a different extent, in all countries. Its intensity in a given country depends above all on the social consent towards corruptive incidents [Kowalczyk 2012, p. 14]. We have to be aware of the fact that corruption in healthcare entails also substantial financial losses. Firstly, we have to decide if we want to pay for something for which we had already paid by way of social insurance contributions, and secondly, if we, as a society, want to finance independent services, benefits and pensions through a “bribery” [Ministerstwo Zdrowia 2006, p. 3].

Types of corruption

We should mention here what stipulated the sentence issued by the Court of Appeals in Lublin on 13th October 2009 (II Aka 118/09): there are no factual justifications to promote an idea that the custom of rewarding doctors for saving life or health is commonly accepted and treated as a social norm, bearing in mind that a doctor is rewarded for their job within the framework of public healthcare system, given they work in entities financed from the public funds [Łokaj 2016].

An offence commonly known as corruption in penal law is known as bribery. Penal law distinguishes two types of bribery: passive and active.

Passive bribery (also known as venality) is defined in Article 228 of Penal Code as an act committed by a person who in connection with the public office in which they serve accepts financial or personal gain or the promise thereof.

Active bribery is defined in Article 229 of Penal Code as an act committed by a person who gives or promises to give financial or personal gain to a person serving in a public office in connection with the office thereof.

The sanctions pending for the commitment of the aforementioned offences, both active and passive bribery, depend on the type of the offence and may vary (fine, imprisonment for a term of up to 12 years) [Ministerstwo Zdrowia 2006, p. 4].

According to the Polish Penal Code, there are two premises that allow to conclude that an offence of passive bribery has been committed. First, the subject of the offence can only be a person serving in a public office. Second, this person has to accept financial or personal gain or a promise thereof. Only if both aforementioned premises are fulfilled can we talk about an offence under Article 228 of Penal Code.

According to the jurisprudence of the Supreme Court, it should be assumed that medical professionals employed in healthcare units (public and private) who provide health services financed from the public funds are also public officers, as stipulated in Article 228 of Penal Code. The Supreme Court explicitly stated that the decisive factor to conclude that providing health services lies within the scope of the definition of a public officer is not the type of healthcare unit there are provided in (public or private), but whether they are provided to the entitled person (patient) within health services financed from the public funds. A medical professional also serves in a public office, performing not only medical, but also administrative tasks [Karkowska, Karkowski 2017, p. 133].

It should be emphasised that the legislator even further tightens the punishability in the case of committing passive bribery by accepting financial gains of substantial value, an act punishable by imprisonment of between 2 and 12 years (Article 228 paragraph 5 of Penal Code). We have to agree with the principle expressed in the law according to which, in a case when the gift is of small value, we should contemplate the possibility of dealing with an act of less importance, regulated in Article 228 paragraph 2 of Penal Code. Such a case would be, in particular, delivering gain that exceeds socially accepted, i.e. customary rewards only to a limited extent, and is a small gift (flowers, sweets, a bottle of cognac etc.) given as a token of gratitude for kindness or particular efforts made in connection with the functions fulfilled. It could be interpreted that giving doctors small gifts such as flowers, sweets or coffee is permissible. However, such a gift can only be given after the treatment and should not be expected by the doctor. It is supposed to be a token of sincere gratitude of the patient for the treatment received. At the same time it should be stressed that each case of such a situation should be analysed individually. Current praxis in the European Union shows that any gifts for the doctors are prohibited, and Polish authorities clearly go in the same direction [Łokaj 2016].

While contemplating corruption as a phenomenon that should not happen in good management, a wide definition proposed by the World Bank is used: it is any abuse of a public office aiming at obtaining personal benefits. This benefit may be of various kinds: financial or material benefit, increase in power or informal influence, demonstration of the possibility, unavailable to other people, to solve a difficult problem. The most common type of corruption is bribery, given and received in situations when there should be no financial exchange between the parties. A patient giving a bribe may have different motives which to a great extent depend on the circumstances and the type of obstacles which by way of an informal pay are going to be solved, as is the intention of the giver. It can be getting access to a service – consultation, examination, hospitalisation or medicine – shortening the waiting time if it is considered to be too long, improving the quality of the health service or the conditions in which it is performed.

Other type of corruption is theft. Petty theft (dressings, small equipment) happen almost everywhere, and even though they bring in losses, they are normally tolerated. A more complex case is using rooms and equipment belonging to a public entity to receive private patients. It happens both in systems in which various forms of coexistence of two sectors are legalised, and in the countries where the rules of coexistence are not settled. As a theft of time – although this term is rarely used – we should understand dedicating labour time remunerated by a public institution to other activities, including additional job.

Moreover, there may be an agreement between a doctor and a patient as to the issuing of a sick leave or health assessment form, used to gain an independent service. Sometimes doctors collude to issue the expected opinion about the necessity to perform an operation from which a doctor derives extraordinary gains. Certificates and opinions may be used in tenders with the insurer or payer. Also, drugs which use is not sufficiently justified are frequently prescribed [Włodarczyk 2014].

Corruption and pharmaceutical companies

As far as pharmaceutical market is concerned, in the case when a given drug is being considered to be placed on the list of reimbursed drugs, the subjects striving to a positive decision may address corruptive offers to the decision-makers and opinion-issuers. Unfortunately, corruptive methods may also be used to present untrue or inexact information. Where drugs are concerned, these may be investigation results of clinical effectiveness, application conditions, as well as patients safety. Pharmaceutical companies finance patients' organizations, convincing them about the positive aspects of their drugs and expecting that the pressure exerted by persons seemingly unconnected to the manufacturers will be strong enough as to influence the decisions of the administrative bodies and the cash flow. Sometimes pharmaceutical companies openly admit that one of the aims of the functioning of patients groups is promoting the increase of refunding policy of innovative drugs, which normally meets with the objection or resistance of subjects responsible for managing public funds. The representatives of patients groups and organizations are rarely inclined to reveal their connections with pharmaceutical companies. Different forms of camouflage are frequently used, thanks to which money transfers for positive, pro-social activities make impression [Włodarczyk 2014].

Another restriction existing in the pharmaceutical market is a prohibition set under Article 58 of Act on Pharmaceutical Law (unified text Dz.U. [Journal of Laws] from 2016, item 2142, with subsequent amendments) by which it is prohibited to direct advertisements of medical products to persons authorised to issue prescriptions and persons trading in drugs by way of giving, offering and promising them material gains, gifts and va-

rious forms of help, rewards, trips, as well as organising and financing conferences advertising medical products, during which the extend of hospitality exceeds the main objective of the conference. However, it does not include items of a value not exceeding 100 PLN, connected with the medical or pharmaceutical practice, labelled with the company's or medical product's trademark. The aim of this norm is to prohibit exercising pressure on doctors and a certain form of hidden bribery used to gain preference for specific medical products.

Nevertheless, the evaluation of the doctor's behaviour may be difficult from the legal point of view, as the doctor uses the gift in front of the patients, becoming in this way an intermediary of an advertising message. It is worth pointing out that this message is directed to the public. It all happens so naturally that by hanging in the consulting room a calendar with a logo of medical products or writing down the dosage of medications on a sheet of paper with the name of another medication the doctor may not be aware of participating in an advertising process [Stankiewicz 2016].

Passive bribery

Corruption includes such offences as venality, bribery and paid protection. In public procurements passive bribery consists in accepting (or demanding), in connection with a public procurement in progress, material or personal gain (or a promise thereof) by a person having public funds at their disposal. The offence of venality (Article 228 of Penal Code) is an individual offence, that means only a person indicated in the provision can commit it, i.e. public officer [Soszyńska-Purtak 2016].

Group for Counteracting Frauds and Corruption in Healthcare

In 2006 the Minister of Health created the Group for Counteracting Frauds and Corruption in Healthcare as a consultative-advisory body, the tasks of which include in particular [Zarządzenie 2006]:

- Identification of the areas and forms of frauds and corruption in healthcare;
- Presenting additional proposals of anticorruption activities and counteracting frauds in healthcare within an anticorruption strategy;
- Presenting proposals of activities within an outreach campaign about the fight against corruption in healthcare;
- Presenting proposals of actions within international cooperation programmes concerning counteracting frauds and corruption in healthcare.

The aforementioned functions are complemented by a consultative-advisory function connected with the realisation of tasks imposed on Minister of Health by the Governmental Anticorruption Programme for the years 2014–2019.

Moreover, in November 2006 the Ministry of Health prepared a guidebook addressed to the patients: “Korupcja nie wyjdzie nam na zdrowie...” (Corruption won’t heal us), the objective of which was to explain what corruption in healthcare is and what kinds of legal protection a patient has in a situation when the occurrence of corruptive actions is suspected. The guidebook included sample situations describing the phenomenon of corruption, as well as defined what should be done and who to go to in order to counteract corruption effectively. The objective of the guidebook was also making the readers aware that corruption is an offence prosecuted *ex officio* [Korupcja... 2006].

Report of the European Commission

At the end of 2013 the European Commission published a report about corruption in healthcare in the UE member states. A particular emphasis was put on three areas of healthcare: providing health services (various forms of informal payments), ordering and certifying medical products, and ordering and granting marketing authorization for a medicinal product [European Commission 2013, p. 12].

According to the authors, corruption is mostly evident in the relations between doctor and patient. In the area of medical equipment and drugs, corruption occurs most commonly in public procurements and inadequate marketing relations. In healthcare sector, corruption happens in every UE member states, however, it differs in terms of the characteristics and the incidence of its various forms. Corruption in public procurements, occurring in all Europe, takes form of inadequate marketing relations, which consist in transferring money, financing conferences, trips or other incentives. Corruption in public procurements seems to happen rarely in those countries in which public procurements sectors are strictly regulated.

Corruption in healthcare may be favoured by certain weaknesses in the system, such as low wages, too limited funds for healthcare, connections with other companies; or loops in the supervision system, anticorruption legislation or the effectiveness of the court system. One of the factors considered to favour corruption is common consent for it, or at least a certain grade of tolerance. The authors of the report notice, however, that in almost all member states the social consent for corruption has decreased. It has to be pointed out that there is no single effective anticorruption strategy. According to the investigation, such policy has to be based on strong, independent institutions and the lack of social consent for it.

Investigation results show that the main area of corruption in Polish healthcare are public procurements. The authors point out that Poland does not use a unified system of procurements for this sector.

Another important problem indicated by the EC report is nepotism. According to the authors, it is particularly evident in university college hospitals. In Poland, especially among doctors, prevails a belief that medicine is a family business, passed on from parents to children. A characteristic feature of the Polish healthcare is also a lack of sensitivity for a potential conflict of interests.

The main factor favouring corruption – even though its scale is smaller than a couple of years ago – is the mentality of the Polish society, evident in, for example, social acceptance for giving bribes and not seeing negative effects of corruption.

According to the respondents, the problem of informal payments in Polish healthcare has significantly decreased recently, what is connected to the access to private healthcare services. Nevertheless, the problem continues.

Central Anticorruption Bureau

According to the “Expected corruption threats in Poland” report prepared in 2013 by Central Anticorruption Bureau (CBA), one of the areas exposed to corruption is health protection. The threats observed in this area are [Przewidywane... 2013]:

- Assigning public funds by the provincial departments of National Health Fund (NFZ) to the purchase orders of medical services, drug reimbursement, orthopaedic appliances and aid materials,
- Carrying out public procurements for the purchase and delivery of equipment and medical appliances, and subcontracting external subjects for medical services,
- Drug legislation process, i.e. illegal influence on legislative processes, also in terms of obtaining certain medical indications for drug use, the size of package available for sale, placing the drug on the list of reimbursed drugs,
- Sponsoring doctors and labour organizations of medical professionals by pharmaceutical companies.

Moreover, limited access to or the lack of selected drugs in the market may trigger the necessity to initiate emergency import procedure of bearer prescription medicinal products, which will generate additional costs for the state budget, independent from the planned reimbursement costs. Corruption and mismanagement may also occur in the interaction between doctors, pharmacists and retailers. It consists in buying out drugs from the pharmacies – using false or ungrounded prescriptions – and then taking them out of the country, which entails unjustified reimbursement costs, and therefore losses for the state budget.

Also, conflicts of interests between healthcare units, voivodship offices and provincial departments of NFZ increase the probability of corruption-related irregularities. The interested parties may, for example, influence the decisions of NFZ concerning the amount of contracts assigned to them. The problem could also lie in the ineffective supervision over the financial situation of the hospitals, which in extreme cases could lead to uncontrolled privatisation processes. Threats for the economic interest of the state and corruption threats may also occur in the area of transplantology. Lack of legal instruments allowing for effective supervision may favour the development of illegal transplantation of tissues and organs. Potential threats may derive from the fact that private banks of tissues and organs and transplantation clinics (which often use illegally obtained materials) may lead public entities to bankruptcy by giving orders to foreign subjects [Przewidywane... 2013].

Implementation of the Governmental Anticorruption Programme for 2014–2019

The Governmental Anticorruption Programme for 2014-2019 is the main instrument for the coordination of national anticorruption policy. Counteracting and preventing corruption requires a systemic attitude, encompassing synchronised objectives and actions of all subjects involved in the fight. The aim of the Governmental Programme is to limit corruption by increasing prevention and education, both in society and in public administration, and by a more effective fight against corruption offences. Corruption prevention and education was intensified, as forming an awareness of the harmful effects of corruption is an indispensable condition for limiting the occurrence of this pathology [Uchwała Nr 37... 2014]. The Governmental Programme contemplates tasks and activities in those fields of social life that are mostly threatened by corruption, for example healthcare. The tasks include increasing prevention of corruption in the healthcare system, whereas the activities include the diagnosis of needs and activities, also in terms of legal norms, carried out to prevent corruption in the healthcare system, in particular in terms of [Najwyższa Izba Kontroli 2016]:

- assigning public funds by the provincial departments of National Health Fund (NFZ) to the purchase orders of medical services, drug reimbursement, orthopaedic appliances and aid materials,
- carrying out public procurements for the purchase and delivery of equipment and medical appliances, and subcontracting external subjects for medical services,
- registering drugs,
- interactions patient-medical personnel, doctor/medical professional organisations – pharmaceutical companies, and recommendations.

Conclusion

Having analysed the above-mentioned legal acts and documents, it turns out that even though there are sanctions for corruption, this phenomenon continues, in particular in the healthcare sector. The remedy for this could be the lack of social consent towards such actions and the introduction of systems for the management of anti-corruption actions at the micro level, i.e. an organisation, an issue that has been described in the article "PN-ISO 37001 management systems for anti-corruption actions and anti-corruption procedure in Jan Paweł II Hospital in Bełchatów.

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